

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 04-0021
Responsible Officer
Periods 2000 through 2001

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ISSUES

I. Sales and Withholding Tax: Responsible Officer Liability

Authority: Ind. Code § 6-2.5-9-3; Ind. Code § 6-3-4-8; Ind. Code § 6-8.1-5-1(b); Indiana Department of Revenue v. Safayan, 654 N.E.2nd 270, 273 (Ind.1995).

The taxpayer protests the proposed assessment of responsible officer liability for unpaid sales and withholding taxes.

STATEMENT OF FACTS

Taxpayer was employed by a company ("Company"). On Company's filing of Articles of Incorporation and all subsequent filings with the Indiana Secretary of State's office, Taxpayer was listed as Company's President, and the address for Company was listed as being in care of Taxpayer.

Taxpayer was granted a rehearing upon providing additional information that the Department did not possess prior to the issuance of the previous letter of findings, and accordingly this supplemental letter of findings results.

I. Sales and Withholding Tax: Responsible Officer Liability

DISCUSSION

The proposed sales tax and withholding tax liability was issued under authority of Ind. Code § 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state. If the individual knowingly fails to collect or remit those taxes to the state, he commits a Class D felony.

The proposed withholding taxes were assessed against taxpayer pursuant to Ind. Code § 6-3-4-8. Also of import is Indiana Department of Revenue v. Safayan, 654 N.E.2d 270, 273 (Ind.1995), which states “The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid.”

Finally, the Indiana Department of Revenue’s “notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid.” Ind. Code § 6-8.1-5-1(b). That statute also states the burden of proof rests with the taxpayer.

Taxpayer argues that he was only an employee of Company, and neither an owner nor officer of Company, at the time of the proposed assessments. Taxpayer provided information that he had been terminated by Company both as an officer and as an employee prior to the assessment period. Taxpayer further provided documentation signed by another person as president of Company. Taxpayer’s subsequent re-employment by Company in an employee-only capacity did not result in Taxpayer being accorded a position in which Taxpayer had a statutory duty to remit the taxes in question. In short, Taxpayer has provided sufficient information that he was not Company’s president, other corporate officer or other responsible person during the period in question, and accordingly the protest should be sustained.

FINDING

The taxpayer’s protest is sustained.